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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN LEYVA,

Defendant and Appellant.

B257121

(Los Angeles County  
Super. Ct. No. BA405487)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
David V. Herriford, Judge. Affirmed.

Hart J. Levin, under appointment by the Court of Appeal, for Defendant  
and Appellant.

No appearance for Plaintiff and Respondent.

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Appellant Jonathan Leyva appeals from the judgment entered following his conviction by jury of driving under the influence of alcohol or drugs, with a finding he willfully refused to submit to a chemical test (Veh. Code, §§ 23152, subd. (a), 23577) and admissions he suffered four prior drunk-driving-related convictions. The court sentenced appellant to county jail for three years, suspending execution of 20 months. We affirm.

### ***FACTUAL AND PROCEDURAL BACKGROUND***

#### ***1. Facts of the Present Offense.***

On December 6, 2012, about 1:30 a.m., Los Angeles Police Officer Pete Benavides and his partner, Los Angeles Police Officer Mercado, were motorcycle officers patrolling near Cherokee and Hollywood in Los Angeles. Benavides saw appellant driving a car on Cherokee. The car's right rear taillight was not operating. Appellant activated his right rear turn signal, but began signaling about 50 feet, instead of the minimum required 100 feet, before negotiating a right turn. The right rear turn signal was flashing very rapidly. Appellant made a right turn onto Hollywood and, for about 75 feet, straddled the dividing line between the number one and two lanes.

Benavides stopped the car. Mercado was present. Benavides contacted appellant and observed his face was flushed and his eyes were bloodshot and watery. Benavides smelled the odor of an alcoholic beverage on appellant's breath.

Appellant's later performance on field sobriety tests indicated he was under the influence. During one test, appellant said, "Just take me in." Benavides offered to test appellant using a preliminary alcohol screening device, but appellant refused. Benavides concluded appellant's mental and physical state were impaired to the point appellant could not safely operate a vehicle.

Appellant was taken to the police station, where, after Benavides read a chemical test admonition to appellant, he refused to take a blood or breath test. Los Angeles Police Sergeant Mark Ro tried to convince appellant to take a chemical test but appellant refused. Appellant presented no defense witnesses.

## 2. *Procedural History.*

Based on the above incident, the information filed April 17, 2013, alleged that on or about December 6, 2012, appellant committed the offense of driving under the influence of alcohol or drugs, and willfully refused to submit to a chemical test. (Veh.Code, §§ 23152, subd. (a), 23577.) The information also alleged four prior convictions discussed below. On April 17, 2013, appellant, represented by counsel (and so represented at all times below mentioned), waived arraignment and pled not guilty.

On October 1, 2013, appellant filed a *Pitchess*<sup>1</sup> motion seeking information from the personnel files of Benavides, Mercado, and Ro. On November 5, 2013, the trial court granted the motion to the extent it sought complaints regarding false police reports or perjury by Benavides, but the court otherwise denied the motion.

On November 6, 2013, the court conducted an in camera hearing on the *Pitchess* motion. The nonconfidential record reflects the court subsequently ordered sealed the transcript of that hearing and ruled there was no discoverable information.

On February 13, 2014, appellant filed a Penal Code section 1538.5 suppression motion. At the March 24, 2014 hearing on the motion, appellant argued Benavides's initial stop of the car appellant was driving was unlawful. Benavides's suppression hearing testimony and trial testimony as to the events leading to the stop were substantially similar, and the trial court ruled Benavides had an objectively reasonable basis to suspect appellant had violated the Vehicle Code, and the stop was lawful. The court denied the motion.

Following the presentation of the People's case at trial, appellant, on May 6, 2014, moved for a judgment of acquittal pursuant to Penal Code section 1118.1. The court denied the motion. Appellant elected not to testify and the parties rested. On May 7, 2014, the jury convicted appellant as previously indicated.

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<sup>1</sup> *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

On June 13, 2014, appellant admitted he had suffered four prior convictions, i.e., a 2004 conviction for a violation of Vehicle Code section 23152, subdivision (b) (case No. 04SM04329), and a 2005 conviction and two 2007 convictions, each for a violation of Vehicle Code section 23152, subdivision (a) (case Nos. 2395752, FVI701260, and TVI700174, respectively). The court sentenced appellant to county jail for three years but suspended execution of 20 months. The court ordered appellant to complete an 18-month alcohol program, ordered his driver's license revoked for 10 years pursuant to Vehicle Code section 23597, awarded 89 days of presentence credit, and imposed various fines and fees.

Pursuant to Vehicle Code section 23593, subdivision (a), the court told appellant, "Mr. Leyva, let me advise you that being under the influence of alcohol or drugs or a combination of both impairs your ability to safely operate a motor vehicle and is dangerous to human life. If you continue to do so and someone is killed during the course of that driving, you could be charged with murder and face a sentence of life in state prison." On June 13, 2014, appellant, through his counsel, filed a notice of appeal.

### ***CONTENTIONS***

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. Appellant also requested this court to conduct an independent review of the in camera hearing on his *Pitchess* motion.

By notice filed March 16, 2015, the clerk of this court advised appellant to submit within 30 days any contentions, grounds of appeal, or arguments he wished this court to consider. No response has been received to date.

### ***REVIEW ON APPEAL***

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

Moreover, we have reviewed the contents of the sealed transcript of the November 6, 2013 in camera hearing on appellant's *Pitchess* motion. Trial courts are granted wide discretion when ruling on motions to discover police officer personnel records. (*People v. Samayoa* (1997) 15 Cal.4th 795, 827; *People v. Memro* (1995) 11 Cal.4th 786, 832.) The sealed transcript of said in camera hearing constitutes an adequate record of the trial court's review of any document(s) provided to the trial court during the in camera hearing, and said transcript fails to demonstrate the trial court abused its discretion by failing to disclose information. (Cf. *Samayoa*, at p. 827; see *People v. Mooc* (2001) 26 Cal.4th 1216, 1228-1230, 1232.) The trial court fulfilled its responsibilities under *Pitchess*.

***DISPOSITION***

The judgment is affirmed.

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KITCHING, J.

We concur:

EDMON, P. J.

JONES, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.